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VOR Weekly E-Mail Update
December 19, 2009
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Torisky v. Schweiker, CA 02-499
Replacement attorney sought for Western Center damage suit

By Dan Torisky

About the author: Daniel Torisky is the father of a 51-year old son, a former Western Center resident who is the lead plaintiff in *Torisky v. Schweiker*. Mr. Torisky served for 20 years as president of the Western Center Board of Trustees, and is a former president of the Autism Society of America.

Summary of this article: This article provides factual and legal background on a lawsuit against the state, filed by families of former Western Center residents who are seeking damages on behalf of their loved ones who were forcibly removed from Western Center on two days in April 2000

Summary of request: . Mr. Torisky is seeking an attorney to present this case in court. Interested attorneys may contact and receive comprehensive background information from Dan Torisky by calling 412-427-0004.

About the Case, *Torisky v. Schweiker*:

Statement of the Department of Public Welfare, October 10, 2008 following September 18, 2008 hearing in Western Pennsylvania Federal District Court:

Torisky v. Schweiker (W.D. Pa.) (Judge Conti) - The plaintiffs in this case are former resident of Western Center who were class members in the *Richard C. v. Houstoun* litigation.

"The plaintiffs contend that DPW and its officials (and the Governor) violated their rights under the Due Process Clause, the federal Medical Assistance Act, and the ADA by discharging them from Western Center to inappropriate placements. The injunctive relief the plaintiffs sought, in essence, would contravene the Settlement Agreement in *Richard C.* by, for example, mandating that DOW allow the plaintiffs to return to institutional placements. The plaintiffs also seek damages for alleged harm sustained as a result of their transfers to community placements. Disability Rights Network of Pennsylvania, The ARC of Greater Pittsburgh and Pennsylvania (who had been organizational plaintiffs in the *Richard C.* litigation) intervened in this lawsuit to prevent plaintiffs from securing injunctive relief that would effectively overturn the settlement in *Richard C.*"

Parents and families of abruptly displaced residents of Western Center, a state ICFMR residential care and treatment facility in southwest Pennsylvania, are seeking an attorney to assume handling of this landmark law suit seeking damages from Pennsylvania Department of Public Welfare officials and the governor who closed the center in April, 2000, on one day's notice and with police supervision.

The original attorney, William Burke, suffered a heart attack and died in 2005, and there have been two subsequent attorneys for the families since then. One became seriously ill while the other unsuccessfully pursued a settlement.

According to lead plaintiff Daniel A. Torisky, "Interminable motions for dismissal, interrogatories, change of venue, and depositions of each plaintiff demanded by the defendants have caused the suit to drag on. The defendants were supported in this by the Pennsylvania Protection and Advocacy agency - now called Disability Rights Network of Pennsylvania - who intervened on their behalf against the families." Torisky said.

On September 18 of this year, PA-DPW attorney Howard Ulan, representing the defendant state officials, petitioned Western Pennsylvania Federal District Court to approve Rule 11 sanctions against the plaintiff attorneys, and also to summarily dismiss the suit.

Judge Joy Flowers Conti, however, denied both motions. Her order gave the plaintiff families until December 31, 2008 to obtain replacement counsel, but left the door open for an extension, stating: "if replacement counsel is not obtained prior to December 31, 2008, and plaintiffs have a good faith basis to believe counsel might be obtained shortly thereafter."

Finding new counsel keeps this case alive, said Torisky, and will give families the opportunity to present in court evidence supporting their claim for damages. Evidence includes tape of the NBC news coverage of the April 11-12, 2000 closure, which prompted the original attorney, the late William Burke, to call the suit a "slam dunk."

Two firms have expressed interest, Torisky said, and are in the process of studying comprehensive information on the legal action which has been sent to all of them. Most significant has been the interest of the former House of Representative Speaker Dennis O'Brien, who is assisting the families in this effort. He is the former head of the House Judiciary Committee.

Factual and Legal Background

Western Center served 9 counties in southwest Pennsylvania since 1962, admitting over 1700 residents and discharging more than 1366 to community placements since that time. Population of acute care residents peaked at approximately 400 when the Association for Retarded Citizens and PA Protection and Advocacy filed a class action suit in Western Pennsylvania Federal District Court. This resulted in a settlement agreement requiring each resident to be evaluated and determined by their treating professionals and families to be suitable or not suitable for discharge to community placements. Department of Public Welfare officials and Governor at the time were willing, cooperative defendants in this action. State policy was then, and is to this day, downsizing and closure of all state its ICFMR facilities.

This process dragged on from 1992 to 2000 with few if any so recommended for outplacement. Many were summarily discharged without the court-directed evaluation and recommendations. This resulted, Torisky said, in 32 uninvestigated deaths in group homes whose practices were adjudged unsatisfactory

by then PA Auditor General (now Senator) Robert P. Casey. Casey also found the discharge and outplacement procedure of residents to be arbitrary and in violation of the Settlement Agreement.

The defendants ignored the Federal Settlement Agreement and the court-directed preparation of residents for outplacement. Without warning, parents and guardians of Western Center residents were informed on April 10, 2000 Western Center would close on April 11 and that their family members would be transported that day and the next to various facilities and houses through western Pennsylvania.

Early the morning of April 11 and through April 12, Western Center's residents were loaded into vans and busses and driven away.

Earlier that morning of April 11 and again the next day, State police cordoned off the grounds and prevented parents and guardians from contacting their family members. One resident, who somehow broke free and ran across grounds screaming for her sister, was apprehended by two troopers, arrested, handcuffed and forced into a patrol car.

It was learned that most were taken to locations that were not prepared for them, from Erie to Polk Center and Ebensburg Center, one to a motel, others to houses still under construction and with untrained staff, and others to crowded, restrictive units - figurative "holding pens" until proper accommodations could be made for them much later.

The trauma these residents suffered has been trivialized by the state appointees (defendants) who perpetrated this, including the attorney who was appointed by the court to represent them, as a class, over the objections of their parents and guardians. This ARC attorney was quoted by the Western Center superintendent - who in an earlier private meeting of state DPW officials cautioned against the attorney's insistence on transferring residents without proper preparation - saying that "a few tragedies are the price of progress." The trauma to the anxious, helpless families compounded this tragedy, that has seen the uninvestigated deaths of at least 32 former residents since the forced outplacements began in 1993.

Said Torisky, "The lack of regard and respect by the perpetrators for the feelings of the residents is obvious. That such trauma could have short and long term effects - like "normal" folks - also obviously is beyond their comprehension.

"It is of significance that the requirement for proper evaluation and, where indicated, preparation for transfer to a different resident care and treatment setting was put in place by the court, based on best-practice professional input. Agreed to gushingly by the perpetrators at the time as being in the very best interests of the residents well being, this court-directed requirements quickly became expendable to them in their frenzy to close Western Center - for reasons that had nothing to do with the well being of the residents," he said.

Legal Help Needed

A remaining significant issue is the plaintiffs claim for damages and the opportunity to present evidence in court to support it. Interested attorneys may contact and receive comprehensive background information from Dan Torisky by calling 412-427-0004.

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Tamie Hopp

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THANK YOU!!